

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5891 of 1985

Date of decision: 26-09-96

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

GULZAR NAGAR CO-OP HOUSING SOCIETY

Versus

IBRAHMIMBHAI G GHASWALIA

Appearance:

MR VC DESAI for Petitioners

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 26/09/96

ORAL JUDGEMENT

Heard the learned counsel for the petitioner. I do not find any substance in this special civil application. The dispute is in between the petitioners who allege themselves to be members of Gulzar Nagar Cooperative Housing Society at Vastral, Ahmedabad. Respondents No.1 and 2 claim themselves to be chairman and secretary of the said society. This dispute gave

rise to the filing of arbitration suit No.32 of 1983 by the petitioners in the court of Board of Nominees and prayed for injunction against respondents No.1 and 2, as also injunction not to interfere with the management of the society by them. Respondent No.2 filed written statement in this case as per Exh.24 wherein manifold objections were raised including the objection regarding jurisdiction of arbitrator in the matter. The learned nominee framed issue in the suit. Issue No.1 reads as follows:

"Whether defendants prove that plaintiff Nos.1 to 8 are not the members of the plaintiff No.1 Society and that they are not the members of the Managing Committee and that plaintiff Nos. 2 to 8 have no right to file present suit?"

The burden of proof of the said issue has been placed on the petitioners. The petitioners submitted application Exh.64 for reconstitution of the said issue. The application was resisted by respondents No.1 and 2. Learned Nominee rejected the same by its order dated 3-10-1984. Dissatisfied by the said order of the learned nominee, the petitioners preferred revision application No.144 of 1984 before respondent No.3. The revision application has been dismissed on 29th March,1985. The revisional court has ordered that till the suit is finally decided, for the time being the Registrar should appoint Administrator for the management of the Society. This petition has been filed against the said order.

2. Interim relief was granted in terms of para 9(B) of the petition. Para 9(B) of the petition reads as under:

"9(B) During the pendency and final disposal of this petition, directions given by respondent No.3 in the operative part of annexure-B be stayed."

The operative part of the order of the revisional court has been stayed and thereby registrar could not appoint administrator for the society.

3. The interim relief granted by this court was continued for all these years. It is a cooperative housing society, and after 1985 there are all possibilities of holding election of managing committee of the society. Therefore I do not consider it proper at this stage to allow the Registrar to appoint Administrator of the society. Yet there is another possibility that the suit would have itself been disposed of. The counsel for the petitioners is unable to say whether the suit is pending or not. He does not make any grievance against the rest of the order made by the

revisional court.

4. In view of this position the interest of justice will be met if the special civil application is disposed of with the direction that it shall be open to the registrar to consider the matter afresh for appointment of administrator of the society, after hearing all the parties concerned including petitioners No.1 to 8 as well as respondents No.1 and 2. Rule made absolute in the aforesaid terms. No order as to costs.

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csm